

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SCOTT RODGERS)	C.A. No. 04-11842-PBS
Plaintiff,)	
)	
v.)	
)	
CORRECTION OFFICER ORCHID,)	
UNKNOWN CORRECTION OFFICER JOHN)	
DOE, JOE WHITMORE, DR. HOWARD,)	
JOHN SMITH, PLYMOUTH COUNTY)	
Defendants.)	
)	

AFFIDAVIT OF COUNSEL IN SUPPORT OF MOTION FOR SANCTIONS

I, Michael Tumposky, do hereby swear and depose the following:

1. I am an attorney in good standing with the Massachusetts Bar and admitted to practice law in this Court.
2. I am co-counsel for the Plaintiff in the above entitled-matter.
3. I twice sent notices of deposition to Defendant Howard, well in advance of the scheduled date.
4. Prior to sending the second notice, I spoke to Defendant Howard by phone and we mutually selected a date and time based upon our schedules. At that time, he informed me that he did not intend to hire an attorney because he did not feel he had done anything wrong.
5. On both June 1 and June 22, 2006, Defendant Howard did not show up for his deposition. In both instances, he claimed that he did not receive the notice until the scheduled day. This was despite the fact that the notices were sent eight and fourteen days in advance, respectively, and the fact that Defendant Howard had himself picked the date of June 22.

6. On the first scheduled date, I, along with counsel for the other Defendants, waited one-half hour for Defendant Howard's arrival before suspending.
7. In addition, I spent a total of five and one-tenth hours of time in preparation for Defendant Howard's deposition, including reviewing medical records, researching the medication at issue, and reviewing the contractual agreement between the Defendants Howard and Plymouth County.
8. I spent one hour drafting this motion and speaking with Defendant Howard by telephone regarding his missed depositions.
9. I currently bill at an hourly rate of at least \$175.00.
10. After the second scheduled deposition failed to go forward, I contacted Catuogno Court Reporting, with whom I had arranged the stenographer in both instances.
11. Catuogno indicated that they would be billing a total of \$437.80 for Defendant Howard's depositions. The cost broke down as follows: \$210 for the court reporter and \$8.90 for the one page transcript, indicating that the Defendant Howard did not attend, for each of the two missed appearances.
12. I believe that further attempts to confer in good faith with Defendant Howard to resolve this matter would be futile.

Signed under the pains and penalties of perjury on this the 22nd day of June, 2006.

//s// Michael Tumposky
Michael Tumposky (BBO No. 660618)
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CERTIFICATE OF SERVICE

I, Michael Tumposky, hereby certify that on this 22nd day of June, 2006, I served a true and correct copy of the foregoing, where unable to do electronically, on all counsel and parties of record in this matter.

//s//Michael Tumposky
Michael Tumposky